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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

MICHELLE-LAEL NORSWORTHY,

Plaintiff,

v.

OFFICER FELIX, et al.,

Defendants.

1:23-CV-01151-KES-SKO

STIPULATED PROTECTIVE ORDER

Judge: The Honorable Kirk E. Sherriff / The Honorable Sheila K. Oberto

Action Filed: August 2, 2023

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, Plaintiff Michelle-Lael Norsworthy ("Plaintiff") and Defendants B. Cowings, J. Haynes, M. Felix and M. Villanueva (collectively, "Defendants") (together with Plaintiff, the

1 “Parties”) hereby stipulate to and petition the court to enter the following Stipulated Protective
2 Order. The parties acknowledge that this Order does not confer blanket protections on all
3 disclosures or responses to discovery and that the protection it affords from public disclosure and
4 use extends only to the limited information or items that are entitled to confidential treatment
5 under the applicable legal principles. The parties further acknowledge, as set forth in Section
6 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential
7 information under seal; Civil Local Rule 141.1 and 143 sets forth the procedures that must be
8 followed and the standards that will be applied when a party seeks permission from the court to
9 file material under seal.

10 2. DEFINITIONS

11 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.

13 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
14 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
15 of Civil Procedure 26(c).

16 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support
17 staff).

18 2.4 Designating Party: a Party or Non-Party that designates information or items that it
19 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
20 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

21 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
22 or manner in which it is generated, stored, or maintained (including, among other things,
23 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
24 responses to discovery in this matter.

25 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
26 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
27 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
28

competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor.

2.7 "ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means. Information (regardless of how it is generated, stored, or maintained) or tangible things that a Party has designated in good faith to be confidential and for attorneys' eyes only. The criteria for such designation shall be whether the Party has a good-faith belief that the information is entitled to protection from disclosure to non-attorneys, because such information threatens the safety of individuals or inmates, or threatens the safety and security of a prison. "Attorneys" shall be limited to the counsel of record in this case, their support staff, and Expert(s)

2.8 "HIGHLY CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c). Information or Items designated "HIGHLY CONFIDENTIAL" by the Producing Party shall not be allowed to be taken into the custody and control of non-counsel, including the individual parties, absent written permission by the Producing Party. The criteria for such designation shall be whether the Party has a good-faith belief that the information cannot be taken into the possession of non-counsel, including the individual parties because such information threatens the safety of individuals or inmates, or threatens the safety and security of a prison. Such information can be viewed by individual parties, but cannot be taken into their possession. Such information can be taken into the possession of a party's retained Expert(s) subject to the appropriate declaration.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court

1 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
2 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
4 including the time limits for filing any motions or applications for extension of time pursuant to
5 applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
8 Non-Party that designates information or items for protection under this Order must take care to
9 limit any such designation to specific material that qualifies under the appropriate standards. To
10 the extent it is practical to do so, the Designating Party must designate for protection only those
11 parts of material, documents, items, or oral or written communications that qualify – so that other
12 portions of the material, documents, items, or communications for which protection is not
13 warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
16 unnecessarily encumber or retard the case development process or to impose unnecessary
17 expenses and burdens on other parties) expose the Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it designated
19 for protection do not qualify for protection at all or do not qualify for the level of protection
20 initially asserted, that Designating Party must promptly notify all other parties that it is
21 withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
23 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
24 or Discovery

25 Material that qualifies for protection under this Order must be clearly so designated before
26 the material is disclosed or produced.

27 Designation in conformity with this Order requires:
28

1 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
2 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
3 legend “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” to each page that contains protected material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
7 specify, for each portion, the level of protection being asserted.

8 A Party or Non-Party that makes original documents or materials available for inspection
9 need not designate them for protection until after the inspecting Party has indicated which
10 material it would like copied and produced. During the inspection and before the designation, all
11 of the material made available for inspection shall be deemed “CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
13 copied and produced, the Producing Party must determine which documents, or portions thereof,
14 qualify for protection under this Order. Then, before producing the specified documents, the
15 Producing Party must affix the appropriate legend (“CONFIDENTIAL,” “HIGHLY
16 CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that
17 contains Protected Material. If only a portion or portions of the material on a page qualifies for
18 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins) and must specify, for each portion, the level of protection
20 being asserted.

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
22 Designating Party identify on the record, before the close of the deposition, hearing, or other
23 proceeding, all protected testimony and specify the level of protection being asserted. When it is
24 impractical to identify separately each portion of testimony that is entitled to protection and it
25 appears that substantial portions of the testimony may qualify for protection, the Designating
26 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
27 a right to have up to 21 days to identify the specific portions of the testimony as to which
28 protection is sought and to specify the level of protection being asserted. Only those portions of

1 the testimony that are appropriately designated for protection within the 21 days shall be covered
2 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
3 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
4 entire transcript shall be treated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
5 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
7 other proceeding to include Protected Material so that the other parties can ensure that only
8 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
9 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
10 shall not in any way affect its designation as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,”
11 or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 Transcripts containing Protected Material shall have an obvious legend on the title page
13 that the transcript contains Protected Material, and the title page shall be followed by a list of all
14 pages (including line numbers as appropriate) that have been designated as Protected Material and
15 the level of protection being asserted by the Designating Party. The Designating Party shall
16 inform the court reporter of these requirements. Any transcript that is prepared before the
17 expiration of a 21-day period for designation shall be treated during that period as if it had been
18 designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
19 agreed. After the expiration of that period, the transcript shall be treated only as actually
20 designated.

21 (c) for information produced in some form other than documentary and for any other
22 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
23 or containers in which the information or item is stored the legend “CONFIDENTIAL,”
24 “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a
25 portion or portions of the information or item warrant protection, the Producing Party, to the
26 extent practicable, shall identify the protected portion(s) and specify the level of protection being
27 asserted.
28

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is
5 treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
14 by providing written notice of each designation it is challenging and describing the basis for each
15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
16 recite that the challenge to confidentiality is being made in accordance with this specific
17 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good
18 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of
19 communication are not sufficient) within 14 days of the date of service of notice. In conferring,
20 the Challenging Party must explain the basis for its belief that the confidentiality designation was
21 not proper and must give the Designating Party an opportunity to review the designated material,
22 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis
23 for the chosen designation. A Challenging Party may proceed to the next stage of the challenge
24 process only if it has engaged in this meet and confer process first or establishes that the
25 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
27 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
28 Civil Local Rule 141, 141.1 and 302(c) within 21 days of the initial notice of challenge or within

1 14 days of the parties agreeing that the meet and confer process will not resolve their dispute,
2 whichever is earlier. Each such motion must be accompanied by a competent declaration
3 affirming that the movant has complied with the meet and confer requirements imposed in the
4 preceding paragraph. Failure by the Designating Party to make such a motion including the
5 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the
6 confidentiality designation for each challenged designation. In addition, the Challenging Party
7 may file a motion challenging a confidentiality designation at any time if there is good cause for
8 doing so, including a challenge to the designation of a deposition transcript or any portions
9 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
10 declaration affirming that the movant has complied with the meet and confer requirements
11 imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
13 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
15 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
16 file a motion to retain confidentiality as described above, all parties shall continue to afford the
17 material in question the level of protection to which it is entitled under the Producing Party's
18 designation until the court rules on the challenge.

19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
23 to the categories of persons and under the conditions described in this Order. When the litigation
24 has been terminated, a Receiving Party must comply with the provisions of section 15 below
25 (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and
27 in a secure manner that ensures that access is limited to the persons authorized under this Order.
28

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
2 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
5 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
6 this litigation;

7 (b) the Receiving Party, including any officers, directors, and employees of the Receiving
8 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
11 reasonably necessary for this litigation and who have signed the “Acknowledgment and
12 Agreement to Be Bound” (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, and Professional
15 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
18 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
19 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
20 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
21 bound by the court reporter and may not be disclosed to anyone except as permitted under this
22 Stipulated Protective Order.

23 (g) the author or recipient of a document containing the information or a custodian or other
24 person who otherwise possessed or knew the information.

25 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless otherwise
26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
27 disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:
28

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
2 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
3 this litigation;

4 (b) the Receiving Party, including any officers, directors, and employees of the Receiving
5 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
6 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
8 reasonably necessary for this litigation and who have signed the "Acknowledgment and
9 Agreement to Be Bound" (Exhibit A);

10 (d) the court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants, and Professional
12 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
13 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
15 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
16 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
18 bound by the court reporter and may not be disclosed to anyone except as permitted under this
19 Stipulated Protective Order.

20 (g) the author or recipient of a document containing the information or a custodian or other
21 person who otherwise possessed or knew the information.

22 (h) As set forth above, individual parties may not take possession of Information or Items
23 designated "HIGHLY CONFIDENTIAL."

24 7.4 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
25 Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party,
26 Counsel for the Receiving Party may not disclose any information or item designated
27 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to Plaintiff Norsworthy, members of
28 Plaintiff's family, friends or associates of Plaintiff, or to any other inmate, parolee, or person

1 previously in the custody of CDCR or any of their relatives, friends, associates, or the public.
 2 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, only
 3 Counsel for the Receiving Party may have access to and review any information or item
 4 designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Staff employed by Counsel and
 5 Expert(s) retained by the Receiving Party will not disclose any item or information designated
 6 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or make copies of any item or information
 7 so designated, except as necessary for this litigation. Counsel is responsible for ensuring that their
 8 staff and Expert(s) comply with this Order as follows:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
 10 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
 11 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
 12 attached hereto as Exhibit A;

13 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
 14 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 15 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

16 (c) the court and its personnel;

17 (d) court reporters and their staff, professional jury or trial consultants, and Professional
 18 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 19 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

20 (e) the author or recipient of a document containing the information or a custodian or other
 21 person who otherwise possessed or knew the information.

22 7.5 Procedures for Approving or Objecting to Disclosure of “CONFIDENTIAL –
 23 ATTORNEYS’ EYES ONLY” Information or Items to Experts.

24 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
 25 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
 26 that has been designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
 27 paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the
 28 general categories of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information that the

1 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the
2 Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's
3 current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity
4 from whom the Expert has received compensation or funding for work in his or her areas of
5 expertise or to whom the expert has provided professional services, including in connection with
6 a litigation, at any time during the preceding five years, and (6) identifies (by name and number
7 of the case, filing date, and location of court) any litigation in connection with which the Expert
8 has offered expert testimony, including through a declaration, report, or testimony at a deposition
9 or trial, during the preceding five years.

10 (b) A Party that makes a request and provides the information specified in the preceding
11 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
12 within 14 days of delivering the request, the Party receives a written objection from the
13 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

14 (c) A Party that receives a timely written objection must meet and confer with the
15 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
16 agreement within seven days of the written objection. If no agreement is reached, the Party
17 seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule
18 141, 141.1 and 302(c) seeking permission from the court to do so. Any such motion must
19 describe the circumstances with specificity, set forth in detail the reasons why the disclosure to
20 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
21 suggest any additional means that could be used to reduce that risk. In addition, any such motion
22 must be accompanied by a competent declaration describing the parties' efforts to resolve the
23 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
24 setting forth the reasons advanced by the Designating Party for its refusal to approve the
25 disclosure.

26 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
27 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
28 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the Receiving

1 Party may file the Protected Material in the public record pursuant to Civil Local Rule 141(d)
2 unless otherwise instructed by the court.

3 13. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in paragraph 4,
5 each Receiving Party must return all Protected Material to the Producing Party or destroy such
6 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
7 compilations, summaries, and any other format reproducing or capturing any of the Protected
8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
9 submit a written certification to the Producing Party (and, if not the same person or entity, to the
10 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
11 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
12 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
13 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
14 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
15 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
16 product, and consultant and expert work product, even if such materials contain Protected
17 Material. Any such archival copies that contain or constitute Protected Material remain subject to
18 this Protective Order as set forth in Section 4 (DURATION).

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20
21 DATED: February 25, 2025 /s/ Phillip J. Wiese
22 Phillip J. Wiese
23 Morgan, Lewis, & Bockius LLP
24 Attorneys for Plaintiff Norsworthy

25 DATED: February 25, 2025 /s/ John W. Faulconer
26 John W. Faulconer
27 Deputy Attorney General
28 Attorneys for Defendants

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2 IT IS SO ORDERED.

3 Dated: **February 27, 2025**

/s/ Sheila K. Oberto
4 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the Northern District of California on [date] in the case of _____ **[insert formal name of
the case and the number and initials assigned to it by the court]**. I agree to comply with and to
be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature of contempt.
I solemnly promise that I will not disclose in any manner any information or item that is subject
to this Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]